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tion of the social and political action and progress of the negro in Louisiana during all or a part of the quarter of a century of his freedom. Such a work would have no suggestion of special pleading, nor would it enrage the persons whom it is important to convince. It would have lasting value at every stage of the development of this troublesome question.

FREDERIC BANCROFT.

The Union-State: A Letter to Our States-Rights Friend. By JOHN C. HURD, LL.D. New York, D. Van Nostrand Co., 1890. — 135 pp.

Dr. Hurd's views on the constitutional law of the United States are not unfamiliar to students of American history. He has ably presented them in his *Theory of our National Existence* and other works. The occasion for the present pamphlet was a correspondence with an advocate of the right of state secession. As a central point in the discussion of this right appears the historical question as to the actual political status of the thirteen states at the time when the constitution was proposed for ratification by them. A considerable part of the volume is devoted to a presentation of facts from the records of the colonial and continental congresses, illustrating the views which prevailed at the time of the separation from the mother country. The study is an interesting and valuable one.

Dr. Hurd is no believer in state sovereignty. By sovereignty he understands "the existence of *will* and *force* directed to a certain political end." The will and force which secured independence from Great Britain he conceives to have been manifested not by any single colony for its own people and territory separately, but by a number of states together and for their joint territory and population. Upon the success of the war, sovereignty vested therefore not in any single commonwealth, but in the union of all. A federal state, or as the author prefers to say, a union-state, came into existence. Dr. Hurd considers that the reciprocal action of the Continental Congress and the voting peoples of the various colonies anticipated the Declaration of Independence, and also

indicated a consciousness that the exercise of any independent jurisdiction within any colony or province could rest only on a single will and force manifested in the common action of thirteen pre-existing political personalities which had never possessed sovereignty before that time, either for local government or for national existence.

Starting from this historical conception of a sovereignty vested by fact in the states united, the author can find no basis for recognizing at any time any sovereign power in any state separately. The express

declaration in the Articles of Confederation that each state was sovereign has to him no force as against the *fact* to the contrary. And the absence of such a declaration in the Constitution of 1789 is of no significance one way or the other. Sovereignty is a conception wholly apart from the form and powers of government, and the latter alone are the subject-matter of a constitution. Such a theory obviously leaves no room for a constitutional right of secession. The union-state was established for the whole population and territory included within it. Whatever rights any one of the constituent states possessed were but incidental to membership in the union. Renunciation of such membership would be *ipso facto* the disappearance of the state. So Dr. Hurd holds that Rhode Island and North Carolina, if they had persisted in their refusal to ratify the Constitution of 1789, far from assuming the rank of independent nations, would merely have become subject territory of the union-state.

The author thus disposes of state rights and state sovereignty; but he has a very serious grievance against recent writers of a strongly nationalistic type. While he will not see the union-state separated into lesser sovereignties, no more will he see the individual states absorbed into the greater unit. The state which resulted from the revolution was federal, not national. Its essence was in the association of thirteen political corporations, not in the aggregation of the human units contained in these corporations. The author has no patience with the rather fashionable theory that sovereignty *de facto* vested in the Continental Congress by virtue of its actual exercise of governmental functions. Such a view, he thinks, confuses the sovereign with its agent. He can see no ground for the assertion that under the Confederation the several states usurped sovereignty from the people, who by peaceful revolution regained it under the Constitution of 1789. No single state ever possessed sovereignty, original or usurped, and the people of the United States as a whole never appears in history as a political fact. The Constitution of 1789, like the Articles of Confederation, was a frame of government resting for its authority upon the collective will and force—the sovereignty—of the states which united in its ratification. The question settled by the Civil War was simply one of fact, *viz.* whether the states voluntarily remaining together and composing the continuing union-state had the will and force to maintain the former dominion over all the territory and population pertaining to it.

Without discussing here the difficult points in the author's theory—points with which our history since 1861 fairly bristles—it must be remarked that Dr. Hurd's antipathy to the advocates of the national theory leads him at times into misconceptions of their views. He refuses to distinguish between political and legal sovereignty. His own

doctrine refers wholly to the former, but he occasionally administers a castigation to a supposed adversary whose arguments are concerned as exclusively with the latter. He is right in seeking to limit the application of the term to a single conception, but, until the terminology of political science is much more perfect than at present, some allowance must be made. The embodiment of superior force which lies back of all political organization is no doubt the ultimate sovereign. But what shall we call that supreme legislative authority which must exist somewhere in the organization as completed? The sovereign which makes the constitution of the United States possible is, according to Dr. Hurd, such states in combination as have the will and force to maintain the union. Two states sufficiently powerful would seem to be enough under this definition. Yet, under the existing constitution, no change in the fundamental *law* of his union-state can be made save through the action of more than thirty. New York and Pennsylvania might preserve the union by force; but three-fourths of forty-four commonwealths must work together to strengthen the legal ties that bind it. Obviously there is a marked distinction between the political and the legal sovereign. Dr. Hurd seems to think that every one who speaks of a sovereign other than the political must mean the government, and hence must fall into a very silly confusion. His error is in the insufficiency of his own analysis, which fails consistently to discriminate between the power which makes any government possible and that which determines the form and authority of a particular government, — between the sovereignty *back of* the constitution and what may be called the sovereignty *in* the constitution.

With this distinction in mind Dr. Hurd would not have so much difficulty with the theory of revolution in 1787. He will hear of "revolution" only when there is a change in the political sovereign; but some at least of the nationalistic writers apply the term to a change in the legal sovereign, and such a change undoubtedly occurred. Under the Articles of Confederation an amendment of the supreme organic law of the union-state required the action of every state; under the new constitution, the action of three-fourths was made sufficient. Many other of the barriers that separate our author from the national school disappear under the solvent power of this distinction. In fact, the essential principle of his theory and theirs is the same, *viz.* the continued existence of a single political entity in the region separated from Great Britain by the Revolutionary War. He calls this entity a union-state; they call it a nation. Another might say that, before 1865, the former name was more accurate; after that date, the latter.